

ESTATE OF THOMAS V. STIRMAN.

APRIL 26, 1898.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. DAVISON, from the Committee on War Claims, submitted the following

REPORT.

[To accompany H. R. 5479.]

The Committee on War Claims, to whom was referred the bill (H. R. 5479) for the relief of Thomas V. Stirman's estate, submit the following report:

The report of Mr. Stone, made to the House of Representatives at the first session of the Fifty-second Congress, is so full and conclusive that your committee have adopted it as a fair statement of the grounds for relief.

Your committee recommend the passage of the bill.

[House Report No. 157, Fifty-second Congress, first session.]

The Committee on War Claims, to whom was referred the bill (H. R. 854) for the relief of the estate of Thomas V. Stirman, deceased, report as follows:

Thomas V. Stirman, during the war of the rebellion, was the owner of a livery stable in Cynthiana, Harrison County, Ky., and on July 16, 1862, eleven of his horses, together with a set of double harness, eight bridles, and four saddles, were taken from his stable for the use of the troops under the command of William O. Smith, major Seventh Kentucky Cavalry, and appropriated to the use of the United States Army.

The evidence submitted before the Third Auditor of the Treasury and the Court of Claims proves that said Major Smith was in camp at Cynthiana, Ky., recruiting his regiment from June 15, 1862, and that on the 16th day of July following he had 75 men not mounted; that the Confederate forces under General Morgan were raiding throughout the State and might make their appearance at that point, and hence the Federal cavalry troops should all be mounted to resist him, whereupon the horses in the livery stable of Thomas V. Stirman were impressed into service, and that on the 17th day of July a conflict was had between these forces and General Morgan's command at Cynthiana, resulting in the capture of the Federal forces and their horses and equipments.

The claimant was diligent in seeking payment for his property, as will appear in the report of his case from the Court of Claims (Mis. Doc. 39, Fifty-first Congress, first session), and which is embraced in the report of this committee.

[House Mis. Doc. No. 39, Fifty-first Congress, first session.]

Letter from the assistant clerk of the Court of Claims, transmitting findings and opinion of the Court of Claims in the case of John W. Kimbrough, administrator of Thomas V. Stirman, vs. The United States.

COURT OF CLAIMS, CLERK'S OFFICE,
Washington, December 12, 1889.

SIR: Pursuant to the order of the court, I transmit herewith a certified copy of the findings and opinion of the court in the aforesaid cause, which case was referred to this court by the Committee on War Claims, House of Representatives, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. THOS. B. REED,
Speaker of the House of Representatives.

STATEMENT OF CASE.

The claim in the above-entitled case, for supplies or stores alleged to have been taken by or furnished to the military forces of the United States for their use during the late war for the suppression of the rebellion, was transmitted to the court by the Committee on War Claims of the House of Representatives on the 18th day of February, 1885.

T. W. Tallmadge, esq., appeared for claimant, and the Attorney-General, by Lewis Cochran and W. J. Rannells, his assistants, and under his direction, appeared for the defense and protection of the interests of the United States.

On a preliminary inquiry the court, on the 26th day of April, 1886, found that the person alleged to have furnished the supplies or stores, or from whom they were alleged to have been taken, was loyal to the Government of the United States throughout said war.

The case was brought to a hearing on its merits on the 19th day of November, 1889.

The claimant in his petition makes the following allegations:

"That the United States forces, by proper authority, July 17, 1862, took from said Thomas V. Stirman certain quartermaster stores, consisting of horses, harness, saddles, and bridles, which he was using at the time in his livery stable, the value of which amounted to the sum of \$978, and appropriated the same to the use of the U. S. Army at Cynthiana, Ky., and were in detail as follows: Eleven head of horses, which were of the reasonable value of \$910; one double set of harness, valued at \$20; four saddles, valued at \$40; eight bridles, valued at \$8.

"Your petitioner further states that the claim of said deceased for compensation for said stores and supplies was presented to the Quartermaster-General of the United States, who referred the claim for settlement to the Third Auditor of the Treasury under the act of March 3, 1849, but that officer disallowed the claim on the ground he had no jurisdiction to examine the claim of a citizen, and not a soldier, under said act."

Upon the trial the counsel for the defendant raised the question of jurisdiction under section 3 of the Bowman Act, and asked that the case might be dismissed.

The court, after considering the briefs and argument of counsel on both sides upon the question of jurisdiction, find, from the evidence, the facts bearing upon the question to be as follows:

"This claim was filed with the Quartermaster-General October 30, 1863, by C. W. Bennett, attorney for the claimant; November 5, 1863, it was returned to Mr. Bennett without action.

"Thereafter, on November 10, 1863, it was filed with the Third Auditor of the Treasury by said Bennett. The Auditor examined the case and decided that it did not come 'within the provisions of the act of March 3, 1849, as it does not appear that said property was seized by the order of any army officer or agent of the United States. The men who made the seizure were not impressing, but pillaging, and are liable to be punished therefor.'"

Of this decision the attorney for the claimant (Mr. Bennett) was informed by letter dated December 28, 1864.

The claim was never again presented to the Quartermaster-General.

OPINION.

SCOFIELD, J., delivered the opinion of the court:

This claim was transmitted to the Court of Claims February 18, 1885, under the provisions of the act of March 3, 1883, known as the Bowman Act (22 Stat. L., 485), by the Committee on War Claims of the House of Representatives.

By the first section of that act any committee of the Senate or House is authorized to transmit to this court any claim pending before it; but, by the third section, the court is forbidden to take jurisdiction of any claim "which is now (March 3, 1883) barred by virtue of the provisions of any law of the United States."

In this way it becomes the duty of the court to determine whether any case thus referred was, at the date of the act, barred by any law of the United States.

By section 2 of the act of July 4, 1864 (13 Stat., 381), the Quartermaster-General was authorized to receive and examine claims of this description, and if convinced that they were just, the claimants loyal, and the stores taken for and used by the Army, to report them to the Third Auditor for settlement.

By the act of March 3, 1879 (1 Sup. to Rev. Stat., 481, and 20 Stat. L., 650), it is provided:

"That all claims not presented and filed under said act (referring to act of July 4, 1864) and the acts amendatory thereof prior to the 1st day of January, 1880, shall be forever barred."

This claim was presented to the Quartermaster-General by C. W. Bennett, attorney for the claimant, October 30, 1863. On November 5, 1863, it was returned to Mr. Bennett without action, and was never again filed with that officer.

November 10, 1863, Mr. Bennett filed the claim with the Third Auditor. That officer examined it, and on December 28, 1864, informed Mr. Bennett, by letter, that the claim did not come "within the provisions of the act of March 3, 1849, as it does not appear that said property was seized by the order of any army officer or agent of the United States. The men who made the seizure were not impressing, but pillaging, and are liable to be punished therefor."

These facts do not, in the opinion of the court, show that the claim was presented and filed with the Quartermaster-General under the act of July 4, 1864. When it was presented, in 1863, that officer had no jurisdiction, and so returned it to the claimant's attorney. After the act of 1864 the claimant had more than fifteen years in which to present his claim. Not having done so within that time, his claim is "forever barred," and the court must dismiss his petition.

A true copy.

Test, this 12th day of December, A. D. 1889.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

[John W. Kimbrough, administrator *de bonis non* of the estate of Thomas V. Stirman, deceased, vs. The United States. No. 310, Congressional.]

PETITION.—Filed April 16, 1885. J. R.

To the honorable the Court of Claims of the United States:

Your petitioner, John W. Kimbrough, administrator *de bonis non* of the estate of Thomas V. Stirman, deceased, respectfully represents:

That he is a citizen of the United States, residing in Harrison County, State of Kentucky, and by the county court of said county he has been appointed administrator *de bonis non* of the estate of Thomas V. Stirman, deceased, who also resided in said county until his death, which occurred on or about —, 1863, and who resided in said county during the late war of the rebellion, during which he did not give any aid or comfort to the enemies of the United States, but was throughout that war loyal to the Government of the United States.

That the United States forces by proper authority, July 17, 1862, took from said Thomas V. Stirman certain quartermaster stores, consisting of horses, harness, saddles, and bridles, which he was using at the time in his livery stable, the value of which amounted to the sum of \$978, and appropriated the same to the use of the U. S. Army at Cynthia, Ky., and were in detail as follows: Eleven head of horses, which were of the reasonable value of \$910; one double set of harness, valued at \$20; four saddles, valued at \$40; eight bridles, valued at \$8.

Your petitioner further states that the claim of said deceased for compensation for said stores and supplies was presented to the Quartermaster-General of the United States, who referred the claim for settlement to the Third Auditor of the Treasury, under the act of March 3, 1849, but that officer disallowed the claim on the ground he had no jurisdiction to examine the claim of a citizen and not a soldier under said act.

Your petitioner has therefore petitioned the Congress of the United States for relief, and on or about the 18th day of February, 1885, said petition was, by the Committee on War Claims of the House of Representatives, referred to the honorable Court of Claims under section 1 of an act of Congress approved March 3, 1883, entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government."

Your petitioner further states that this claim has not been assigned or transferred, and he is the properly authorized party for the presentation thereof; and that it is correct and just, and no part of the same has been paid the deceased or his legal representative, or any other person for him; that he did not give any aid or comfort to the late rebellion, but was throughout that war loyal to the Government of the United States.

Wherefore your petitioner claims the sum of \$978, and prays for a finding of the facts before set forth and such other facts as may be shown by the evidence, and the same to be reported to the House of Representatives of the United States or to said Committee on War Claims, as provided under said act of March 3, 1883.

JNO. W. KIMBROUGH,

Administrator of Thomas V. Stirman, deceased.

Personally appeared before me John W. Kimbrough, who, being duly sworn, says that the statements contained in the foregoing petition are true, to the best of his knowledge, information, and belief. The above erasure and "John W. Kimbrough" was interlined before signing.

Subscribed and sworn to before me this 10th day of April, 1885.

[SEAL.]

ORIE LEBUS,

Notary Public, Harrison County, Ky.

The court found the original claimant loyal throughout the war by their decision made preliminary to the trial of the merits of the case, and then found they did not have jurisdiction under what is generally called the Bowman Act. Your committee have investigated the evidence which was taken by order of said court, and when the United States was represented by an attorney to cross-examine the witnesses, and are of the opinion it is proven the property as claimed was taken by the authority of and for the use of the United States, which is shown by the testimony of several Federal officers and men in the command; and the claim was approved by Major Smith, the commanding officer.

We find a precedent for payment of a claim to administrator of Richard Heater, of Loudoun County, Va., for property appropriated under similar circumstances (Forty-fifth Congress, second session, approved May 11, 1878).

Your committee therefore recommend that the bill do pass.